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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Case No.: 13-13969-BTB
Chapter 11
Lead Case

REGAL PROPERTY HOLDINGS, INC.,

Debtor.

In re:

Case No. 13-13968-BTB
Chapter 11
Joint Administration With: 13-13969-BTB

RICHARD NEILL TREVOR ROBERTS and
JANE SHERIDAN ROBERTS,

Debtors.

**STIRLING MORTIMER GLOBAL
PROPERTY FUND PCC LIMITED,**

Plaintiff,

V.
RICHARD NEILL TREVOR ROBERTS

Defendants.

Adversary Proceeding No.: 13-01147-BTB

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Hearing Date: *OST Requested*
Hearing Time: *OST Requested*
Courtroom: 4

Richard Neill Trevor Roberts (“**Mr. Roberts**”), Jane Sheridan Elizabeth Robert (“**Ms. Roberts**”), and Regal Property Holdings, Inc. (“**Regal**” and, with Mr. Roberts and Ms. Roberts, the “**Debtors**”), by and through their counsel of record, hereby file their *Motion for Approval of*

1 Settlement Agreement (the “**Motion**”), and seek approval of a comprehensive settlement (the
 2 “**Settlement**”) between the Debtors, on the one hand, and Stirling Mortimer Global Property
 3 Fund PCC Limited (“**Stirling**”) and certain of Stirling’s affiliates (with Stirling, the “**Stirling**
 4 **Parties**”), on the other hand, pursuant to Rule 9019 of the Federal Rules of Bankruptcy
 5 Procedure.

6 This Motion is supported by the following Memorandum of Points and Authorities, the
 7 Declaration of Ryan A. Andersen (the “**Andersen Declaration**”), filed concurrently herewith,
 8 the Declaration of Richard Neill Trevor Roberts (the “**Roberts Declaration**”), filed concurrently
 9 herewith, any arguments of counsel offered in support of the Motion at the hearing on the
 10 Motion, and all of the pleadings filed in the above-captioned bankruptcy case, judicial notice of
 11 which is respectfully requested.

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I. INTRODUCTION

14 The controversy between the Debtors and the Stirling Parties (collectively the “**Parties**”),
 15 has resulted in litigation filed in three separate courts on two different continents. The Parties
 16 have each already spent a great amount of time, effort, and expense litigating these issues, yet
 17 none of the proceedings has reached discovery.

18 The Debtors realized that all of their assets would be spent on legal fees incurred
 19 defending this multi-front litigation, resulting in no recovery for creditors and no hopes of
 20 reorganization. Seeking a better outcome, the Debtors, through their special litigation counsel,
 21 Lionel Sawyer & Collins (“**LSC**”), reached out to English counsel for the Stirling Parties,
 22 Maitland Walker LLP (“**MW**”), in an attempt to reach a global resolution of all issues existing
 23 between the Parties. Settlement discussions began in earnest in mid-September of 2013, and
 24 detailed negotiations continued thereafter, with the Parties reaching an agreement in principle in
 25 mid-November of 2013. The Parties memorialized the terms of this agreement in the Settlement
 26 and Mutual Release Agreement (the “**Agreement**”), attached hereto as “**Exhibit A**”, and now

1 seek the Court's approval of the Settlement and the Agreement. As discussed below, the
 2 Settlement is fair and equitable and provides the best possible outcome for both creditors and the
 3 Debtors' respective bankruptcy estates.

4 II. JURISDICTION AND VENUE

5 The Court has jurisdiction over the Bankruptcy Cases and the subject matter of this
 6 Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core
 7 proceeding under 28 U.S.C. § 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines
 8 that absent consent of the parties the Court cannot enter final orders or judgment regarding the
 9 Motion consistent with Article III of the United States Constitution, the Debtors consent to entry
 10 of final orders and judgment by this Court. Venue before this Court is appropriate under 28
 11 U.S.C. §§ 1408 and 1409.

12 The statutory predicates for the relief requested in the Motion are 11 U.S.C. §§ 105(a)
 13 and Rule 9019 of the Federal Rules of Bankruptcy Procedure.

14 III. STATEMENT OF FACTS

15 A. *The Parties' Business Relationship and Events Leading to the Debtors Filing Bankruptcy*

16 Stirling is a close-ended investment company with limited liability under the laws of
 17 Guernsey. In association with the other Stirling Parties, Stirling operated as an investment
 18 company, establishing "cells" for the acquisition, development, and resale of real estate
 19 developments. Stirling ultimately established five cells for investment in real estate
 20 developments in different geographic locations.

21 Mr. Roberts served as a non-executive director of Stirling from its inception in March of
 22 2007, until May 7, 2010. Mr. Roberts also performed various additional functions for the
 23 Stirling Parties, both as an individual or through various business entities.

24 A dispute developed between Stirling, on the one hand, and the Debtors and other
 25 persons and business entities, on the other hand, and Stirling filed suit against the Debtors and
 26 other persons and business entities (Claim No. 2013-Folio-192) (the "**English Action**") in the

1 High Court of Justice, Queen's Bench Division, Commercial Court (the "**Commercial Court**")
 2 on February 14, 2013. Through the English Action, Stirling sought an order freezing the
 3 Debtors' assets, and the Commercial Court entered a Worldwide Freezing Injunction (the
 4 "**Freezing Order**") on February 14, 2013.

5 In furtherance of its action against the Debtors, Stirling filed an action against the
 6 Debtors (Case No.: 2:13-cv-00301-JAD-NJK) (the "**U.S. Action**") in the United States District
 7 Court, District of Nevada (the "**District Court**") on February 25, 2013. Just as it had in the
 8 English Action, Stirling sought both a temporary restraining order and a preliminary injunction
 9 against the Debtors in the U.S. Action. The District Court entered a temporary restraining order
 10 on February 26, 2013, such temporary restraining order having since expired by its terms, and an
 11 order granting a preliminary injunction on terms similar to those of the Freezing Order (the
 12 "**Preliminary Injunction**") on May 3, 2013.

13 *B. The Commencement of the Bankruptcy Cases and Events Thereafter*

14 On May 6, 2013 (the "**Petition Date**"), the Debtors filed for bankruptcy under chapter 11
 15 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States
 16 Bankruptcy Court, District of Nevada (the "**Bankruptcy Court**"), thereby commencing Regal's
 17 bankruptcy case (Case No.: 13-13969-BTB) and Mr. and Ms. Roberts's joint bankruptcy case
 18 (Case No.: 13-13968-BTB) (collectively the "**Bankruptcy Cases**") and creating the Debtors'
 19 respective bankruptcy estates (the "**Estates**").

20 Stirling moved for relief from the automatic stay in the Bankruptcy Cases to allow
 21 Stirling to proceed with the English Action. The Bankruptcy Court entered an order modifying
 22 the automatic stay to allow Stirling to proceed to judgment on the English Action on August 8,
 23 2013. Stirling sought a default judgment (the "**English Judgment**") against the Debtors in the
 24 English Action, and such English Judgment was entered by the Commercial Court on October
 25 28, 2013

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1 Stirling filed an adversary complaint for declaratory relief before the Bankruptcy Court
 2 (Adversary Case No.: 13-01147-BTB) (the “**Adversary Proceeding**”), on August 5, 2013,
 3 seeking a declaration from the Bankruptcy Court that any judgment in the English Action is not
 4 dischargeable pursuant to Section 523(a)(4) of the Bankruptcy Code.

5 Stirling filed a proof of claim (Claim No. 4) (the “**Proof of Claim**”), on September 3,
 6 2013, such Proof of Claim asserting that the Debtors owed Stirling \$60,664,007.00 as of the date
 7 the Bankruptcy Cases were filed.

8 C. *Negotiations between the Parties and the Settlement*

9 Prior to the filing of the Bankruptcy Cases, DLA Piper UK (“**DLA**”) had acted on behalf
 10 of the Debtors in the English Action. However, the Debtors could not afford to retain DLA to
 11 defend the English Action on behalf of the Debtors and the Estates. Further, Mr. Roberts and
 12 Ms. Roberts each have serious health issues that make travel to England or the participation in
 13 the English Action impossible. Thus, the Debtors informed DLA that they would not be retained
 14 by the Debtors or the Estates on a going forward basis, and that LSC would serve as the primary
 15 contact for MW with respect to any of Stirling’s proceedings against the Debtors. As its last act
 16 on behalf of the Debtors, DLA informed both MW and the Commercial Court of LSC’s
 17 expanded role.

18 Shortly thereafter, in mid-September of 2013, LSC, at the direction of the Debtors,
 19 contacted MW to see if Stirling had any desire to reach a negotiated, global resolution of all of
 20 the issues between the Parties. Thereafter, MW and LSC engaged in settlement discussions, with
 21 the goal of achieving such a settlement. The Parties, primarily through counsel, exchanged
 22 dozens of emails and letters and held several conference calls, sometimes involving Mr. Timothy
 23 M. Clink, director of Stirling, and Mr. Roberts directly. During the over two-months of
 24 negotiations, the Debtors focused on finding a negotiated resolution that would be acceptable to
 25 the Parties, as the Debtors recognized such a negotiated resolution was the only outcome that
 26 was in the best interest of the Estates.

1 On November 20, 2013, the Parties reached an agreement in principle, and LSC began
 2 drafting a settlement agreement to memorialize the Parties' shared understanding of the
 3 Settlement, the result of which is the Agreement. The Parties agreed the Agreement was
 4 acceptable on December 18, 2013, and this Motion followed immediately thereafter.

5 As reflected by the Agreement, the Settlement provides for the full and final resolution of
 6 any and all claims and controversies, known and unknown, including a resolution of the English
 7 Action, the U.S. Action, and the Adversary Proceeding. The Settlement provides for the transfer
 8 of certain of the Estates' property to Stirling as consideration for the Settlement, including a
 9 transfer to Stirling of certain causes of action to recover fraudulent transfers, including certain
 10 actions under chapter 5 of the Bankruptcy Code. Further, the Settlement provides for the
 11 liquidation of certain of the Estates' real property, with payments from the proceeds of such
 12 liquidation then being available to pay administrative claims, priority claims, and unsecured
 13 creditors on a pro rata basis, including Stirling. Most importantly, the Settlement prevents
 14 litigation with Stirling from consuming all of the assets of the Estates, which would prevent any
 15 recovery for any creditors, frustrate any reorganization, and leave the Debtors in an untenable
 16 position. Because of the Settlement, substantial funds will be paid to creditors, administrative
 17 claims will be paid, and the Debtors will be able to quickly and successfully reorganize.

18 **IV. LEGAL ANALYSIS**

19 A. *Standard for Approval*

20 After notice and a hearing, "the court may approve a compromise or settlement". Fed. R.
 21 Bankr. P. 9019(a). Court approval of a settlement is within the Court's discretion and requires
 22 only a sufficient factual record upon which the Court may make an informed and independent
 23 judgment regarding the relative merits of the settlement. *Protective Committee for Independent*
 24 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). The approval of a
 25 settlement is within the sound discretion of the Court, and the standard is simply whether the
 26 settlement is fair and equitable. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

So long as the settlement is fair and equitable, it should be approved; the Court need not determine the actual merits of the claims to be compromised, only whether the settlement entered into is reasonable, given the facts and circumstances of the particular case. *Neiman v. Stein*, 464 F.2d 689, 693 (2nd Cir. 1972). To guide the Court in this exercise, the following factors are to be considered: (a) the probability of success in litigation; (b) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending the same; (c) the difficulty, if any, to be encountered when collecting any judgment obtained; and (d) the paramount interest of the creditors and a proper deference to their reasonable views. *In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

B. The Settlement Should Be Approved

Considering the above factors, the Debtors submit that the Settlement is fair and reasonable and in the Estates' best interests, for at least the following reasons, as supported by the Andersen Declaration and the Roberts Declaration.

1. Probability of Success in Litigation

Stirling has asserted breach of contract, breach of fiduciary duty, and fraud claims, among others, against the Debtors in the English Action. Stirling has asserted RICO claims, among others, against the Debtors in the U.S. Action. Stirling has asserted a nondischargeability action against the Debtors in the Adversary Proceeding. While the Debtors have yet to file a substantive answer in any of these proceedings, the Debtors would assert through the Adversary Proceeding a claim objection and breach of contract claims, among others, against the Stirling Parties. The relationships and transactions in question involve dozens of companies, multiple foreign jurisdictions, complex questions of international finance, and fund transfers in the hundreds of millions. To say that the probability of success by the Debtors is very uncertain is an understatement, and all that can be said for certain is that resolving these issues on the merits will cost the Parties a fortune.

1 The Debtors and the Estates have limited funds, they generate insufficient income to
 2 adequately fund the litigation in question, and their ability to secure future funding is uncertain,
 3 meaning that the Debtors cannot guarantee that they will even have the funds necessary to
 4 continue participating in the extensive litigation before this Court, let alone the litigation before
 5 the English Court or the District Court. This practical reality, when considered with the
 6 unknown outcome of the litigation further lower the probability of the Debtors succeeding on the
 7 merits, and show that the Settlement represents the best possible outcome for creditors and the
 8 Estates.

9 2. Complexity of and Expense, Inconvenience, and Delay Associated with Litigation

10 As discussed above, the litigation between the Parties is inordinately complicated. It
 11 involves proceedings before three courts located on two separate continents. It would require
 12 tracing hundreds of millions of dollars of investor funds through dozens of companies, operating
 13 in several jurisdictions over the course of several years. Determining the appropriate foreign law
 14 to be applied to any given legal question would, in and of itself, be a difficult determination,
 15 undoubtedly requiring expert assistance and opinions.

16 Equally as importantly, the Proposed Settlement enables the Debtors and the Estates to
 17 avoid substantial litigation expenses and risks regarding the relative rights of the Debtors and the
 18 Stirling Parties. Put simply, the Debtors' legal fees for this litigation, if such litigation went
 19 through trial, would be in the millions of dollars. The forensic accounting alone would likely cost
 20 over \$500,000.

21 Compared to the relative expediency with which the Settlement will be effectuated,
 22 litigation between the Parties will likely take until late 2015 for a determination on the merits,
 23 with post-trial motions and appeals following thereafter. This delay is even worse when the fact
 24 that all of the Debtors' and the Estates assets will likely go to fund the litigation, with no
 25 potential for payment of non-insider claims is considered.

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1 This delay, and the risks associated therewith, are a real inconvenience to creditors,
 2 including Stirling. It is a needless inconvenience to the Court, as deciding these complicated
 3 legal and factual issues, when the Settlement provides a superior outcome, would represent an
 4 avoidable waste of valuable judicial resources. Finally, given Mr. Roberts and Ms. Roberts's
 5 serious medical issues, for them the delay associated with determining the litigation between the
 6 Parties goes well beyond an inconvenience, and actually jeopardizes their health.

7 3. The Difficulty of Collection

8 Even assuming the Debtors were successful in pursuing its various claims and causes of
 9 action against Stirling, and even assuming the Debtors were also able to prevent a setoff by
 10 completely defeating all of Stirling's claims and causes of action against the Debtors, it is
 11 uncertain as to the collectability of a money judgment against Stirling. Further, even if a money
 12 judgment was collectible, Stirling is a foreign company, and collection costs would certainly be
 13 substantial.

14 4. The Interest of Creditors and Deference to Creditors' Views

15 The Proof of Claim filed by Stirling asserts a claim of over \$60,000,000. This claim
 16 represents over 98% of all unsecured claims against the Estates. Stirling, the creditor with which
 17 the Debtors are settling, is receiving a substantial amount of funds through the Settlement, and
 18 funds will also be paid to other unsecured creditors. Without settlement, it is almost certain the
 19 Estates will, at a certain point, be administratively insolvent, and no creditors will receive
 20 anything. The Settlement is in the best interest of creditors and represents the best possible result
 21 for the Estates. Given that Stirling has agreed to the Settlement, and given the amount and
 22 percentage of its debt, Stirling's decision should be given great deference and the Settlement
 23 should be approved.

24 Further, the Settlement is the result of extensive, informed, lengthy, good faith, and arm's
 25 length negotiations, primarily conducted through counsel. The Settlement provides a pathway
 26 for the Debtors to reorganize and will allow the Debtors to provide a meaningful payment to

1 holders of non-insider claims. Based on these and other facts and considerations, the Debtors
2 submit that the Settlement is fair, reasonable, and in the Estates' best interest, and it should be
3 approved by the Court. Therefore, the Debtors request entry of an order approving the
4 Settlement and authorizing them to carry out their obligations thereunder. The Debtors further
5 request that any such order contain a provision modifying the automatic stay to allow the Parties
6 to take any action necessary under the Agreement, and further providing that any applicable stay
7 of the effectiveness of the order is waived, as time is of the essence to the Settlement.

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V. CONCLUSION

For the reason set forth above, the Debtors respectfully request that the Court enter an order, substantially in the form of the Proposed Order attached hereto as “**Exhibit B**”: (i) granting this Motion; (ii) approving the Settlement; (iii) approving the Agreement and authorizing the Debtors to implement and effectuate all provisions thereof; and (iv) granting the Debtors such further relief as the Court deems appropriate

Dated this 19th day of December, 2013.

Respectfully submitted by:

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- and -

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